

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

David J. Lubofsky

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Government of Guam;
Government of Guam Retirement
Fund

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Law Offices of Gorman & Gavras, P.C.
2nd Floor, J&R Building
208 Route 4; Hagatna, Guam 96910

ATTORNEYS (IF KNOWN)

04-00031**II. BASIS OF JURISDICTION** (PLACE AN "X" IN ONE BOX ONLY)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(For Diversity Cases Only)

PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury — Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury — Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	LABOR	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input checked="" type="checkbox"/> 442 Employment	HABEAS CORPUS:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights	FEDERAL TAX SUITS	
		<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	Transferred from <input type="checkbox"/> 5 another district (specify) _____
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RECEIVED _____
Appeal to District Judge from _____

JUN 25 2004

6 Multidistrict Litigation

7 Magistrate Judgment

VI. CAUSE OF ACTION(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Title VII Employment Discrimination

DISTRICT COURT OF GUAM
HAGATNA, GUAM**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION
 UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
 YES NO

VIII. RELATED CASE(S) (See instructions):
IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

6-25-04

SIGNATURE OF ATTORNEY OF RECORD

A. M.

FOR OFFICE USE ONLY

RECEIPT #

Case 1:04-cv-00031 Document 1 Filed 06/25/2004 Page 1 of 1

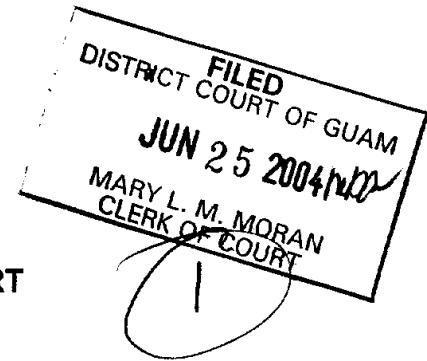
AMOUNT APPLYING FEE

JUDGE

MAG. JUDGE

**A. Alexander Gorman, Esq.
LAW OFFICES OF GORMAN & GAVRAS
A Professional Corporation
2ND Floor, J & R Building
208 Route 4
Hagatna, Guam 96910
Telephone: 472-2302
Facsimile: 472-2342**

**Attorneys for Plaintiff
DAVID J. LUBOFSKY**



**IN THE U.S. DISTRICT COURT
OF GUAM**

DAVID J. LUBOFSKY,

CIVIL CASE NO. 04-00031

**Plaintiff,
vs.**

**GOVERNMENT OF GUAM; GOVERNMENT
OF GUAM RETIREMENT FUND**

Defendants.

**COMPLAINT FOR DAMAGES
FOR RACIAL EMPLOYMENT
DISCRIMINATION
[42 U.S.C. §2000e];
BREACH OF STATUTORY &
IMPLIED CONTRACT; and
NEGLIGENCE**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff DAVID J. LUBOFSKY, and by way of his Complaint, alleges as follows:

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331,1343, & 1367 and 42 U.S.C. § 2000e.
2. Within 180 days after the alleged unlawful employment practice hereinafter set forth, the Plaintiff filed a charge of racial discrimination with the Equal Employment Opportunity Commission satisfying the requirements of 42 USC § 2000e-5, and on or after April 6, 2004, less than 90 days prior to the filing of this Complaint,

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the Plaintiff received a Notice of Right to Sue from the Commission with respect to Plaintiff's charges as set forth below (a copy of which is attached as an Exhibit).

PARTIES

3. Plaintiff DAVID J. LUBOFSKY at all relevant times was and is a resident of Guam and was employed by the Defendant at all relevant times herein.

4. At all times material herein, Defendant GOVERNMENT OF GUAM was and is a public entity organized and existing under the laws of and in the Territory of Guam, as a territory of the United States of America, and pursuant to the Organic Act of Guam, and has its principal place of business in the Territory of Guam within this judicial district. Furthermore, and at all relevant times, this Defendant is and has been a covered entity under the 42 USC §2000e(a) & (b).

5. At all times material herein, Defendant GOVERNMENT OF GUAM RETIREMENT FUND was and is a public entity and an autonomous agency organized and existing under the laws of and in the Territory of Guam as a territory of the United States of America, and pursuant to the Organic Act of Guam, and has its principal place of business in the Territory of Guam within this judicial district. Furthermore, and at all relevant times, this Defendant is and has been a covered entity under the 42 USC §2000e(a) & (b).

6. At all times mentioned herein, Defendant GOVERNMENT OF GUAM and Defendant GOVERNMENT OF GUAM RETIREMENT FUND engaged in an industry affecting commerce and they each employ in excess of fifteen (15) employees and at

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all relevant times, any such relevant employees were acting within the course and scope of their employment, and as such, each Defendant is fully liable for all the acts of it's employees under the doctrine of Respondeat Superior.

7. Defendant GOVERNMENT OF GUAM is legally obligated to provide retirement benefits to its employees. Defendant GOVERNMENT OF GUAM RETIREMENT FUND is legally obligated to administrate the retirement benefits for all GOVERNMENT OF GUAM employees.

8. Plaintiff is informed and believes and thereupon alleges, that each of said Defendants and its employees are jointly and severally liable as the principal, officer, agent, master, servant, employer, employee and partner of each of the other Defendants and was in doing the acts complained of herein, acting within the scope of his, her or its said agency, employment or partnership.

9. At all times material herein, 42 U.S.C. §2000e et. seq. has been fully in force and effect and binding upon Defendants. Such section requires Defendants to refrain from violating the rights of any of its/their employees.

BACKGROUND

10. Prior to his wrongful termination, Plaintiff DAVID J. LUBOFSKY has been employed by the Defendant GOVERNMENT OF GUAM in the Department of Education, a line agency of the GOVERNMENT OF GUAM, as a Department of Education School Psychologist and is an employee within the meaning of 42 U.S.C. §2000e(f).

11. Furthermore, Plaintiff DAVID J. LUBOFSKY is a Caucasian male.

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**FIRST CAUSE OF ACTION FOR TITLE VII RACIAL DISCRIMINATION
VIOLATIONS AGAINST BOTH DEFENDANTS**

12. Plaintiff incorporates by reference paragraphs 1 through 11, above.

13. On or about May of 2001, Defendant GOVERNMENT OF GUAM hired Plaintiff as an employee of said Defendant.

14. On or about January, 2003, Plaintiff suffered a debilitating work injury. Plaintiff is certified as permanently medically disabled by his doctors and is unable to perform his job functions.

15. On or about March 2003, Plaintiff applied for medical disability retirement benefits. At the time Plaintiff applied for medical disability retirement benefits, he was medically qualified for, and legally entitled to, such benefits.

16. Sometime after March 2003, the Defendants denied Plaintiffs application for medical disability retirement benefits allegedly on the basis that no Department of Education employees were eligible for retirement benefits due to a lack of funding. However, between March 2003 and November 2003, Defendant GOVERNMENT OF GUAM RETIREMENT FUND processed and approved the retirement benefits applications of 46 other people, all of non-Caucasian descent. During this same period, Defendant GOVERNMENT OF GUAM RETIREMENT FUND further denied the retirement benefits application of another white male applicant.

17. Therefore, the Defendants wrongfully, intentionally and willfully denied Plaintiff his lawfully entitled medical disability retirement benefits, thereby injuring Plaintiff in his employment based on his race.

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18. The effect of the intentional and wrongful denial of medical disability retirement benefits complained of above has been to deprive Plaintiff of equal employment opportunities and has otherwise adversely affected his status as an employee because of his race.

19. Furthermore, as a proximate result of the Defendants' intentional and wrongful conduct, Plaintiff suffered and continues to suffer from the loss of medical disability retirement benefits, other pecuniary losses, past, present and future mental and emotional distress, anguish and inconvenience.

20. As a further direct and proximate result of the intentional and wrongful conduct of the Defendants, Plaintiff has been damaged in an amount to be proven at trial.

21. The Defendant's discriminatory conduct was willful and intentional and was engaged in with malice and reckless indifference to Plaintiff's federally protected rights thereby entitling Plaintiff to exemplary and punitive damages as provided for in 42 U.S.C. § 1981a(b)(1).

SECOND CAUSE OF ACTION FOR BREACH OF STATUTORY AND/OR IMPLIED CONTRACT AGAINST DEFENDANTS

22. Plaintiff incorporates by reference paragraphs 1 through 21, above.

23. At all relevant times, Plaintiff had a statutory and/or an implied contract of employment with Defendants.

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24. When Defendant intentionally and wrongfully denied Plaintiff medical disability retirement benefits to which Plaintiff is entitled pursuant to Guam law, Defendant breached the statutory and/or implied employment contract.

25. As a proximate result of the Defendants wrongful conduct, Plaintiff suffered and continues to suffer from the loss of employment benefits, other pecuniary losses, past, present and future mental and emotional distress, anguish and inconvenience.

26. As a further direct and proximate result of the intentional and wrongful conduct of the Defendant, Plaintiff has been damaged in an amount to be proven at trial.

THIRD CAUSE OF ACTION FOR NEGLIGENCE

27. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 26, above.

28. The Defendants and their agents and employees were negligent in their aforementioned conduct towards Plaintiff DAVID J. LUBOFSKY.

29. As a proximate result of the Defendants' negligence, Plaintiff DAVID J. LUBOFSKY suffered and continues to suffer from loss of employment benefits, other pecuniary losses, past, present and future mental and emotional distress, anguish and inconvenience.

30. As a further direct and proximate result of the negligence of the Defendants on the aforementioned date, Plaintiff DAVID J. LUBOFSKY has been damaged in an amount to be proven at trial.

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PRAYER

WHEREFORE, Plaintiff DAVID J. LUBOFSKY prays for relief against the Defendants, jointly and severally, as follows:

1. In all Counts for General and Special Damages in an amount to be proven at trial;
2. In count I for exemplary and punitive damages as provided for in 42 U.S.C. § 1981a(b)(1);
3. For costs of suit, attorney fees, and pre-judgment interest as provided for in 42 U.S.C. § 2000e-5; and
4. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a Jury Trial in the above-captioned matter.

LAW OFFICES OF GORMAN & GAVRAS

Date: June 24, 2003

BY: 
A. ALEXANDER GORMAN, ESQ.
Attorneys for Plaintiff
DAVID J. LUBOFSKY

EXHIBIT

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Atty: ALEX
GORMAN

DISMISSAL AND NOTICE OF RIGHTS

To: David J. Lubofsky
Tumon Vista #201
144 Leon Guerrero Drive
Tumon, GU 96913

From: Honolulu Local Office
300 Ala Moana Blvd
Room 7-127
Honolulu, HI 96850

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No.	EEOC Representative	Teleph:
<u>\$78-2004-00117</u>	<u>Glory Gervacio, Investigator</u>	<u>(808)</u>

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans with Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- While reasonable efforts were made to locate you, we were not able to do so.
- You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this Notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Timothy A. Riera, Director

3/31/04
(Date Mailed)

Enclosures:

cc Juan P. Flores
Superintendent of Education
Department of Education
P.O. Box DE
Agana, GU 96932